

2010 No. 2231

WATER INDUSTRY, ENGLAND AND WALES

The Water Use (Temporary Bans) Order 2010

Made - - - - *6th September 2010*
Laid before Parliament *9th September 2010*
Laid before the National Assembly for Wales *9th September 2010*
Coming into force - - *1st October 2010*

CONTENTS

PART 1

Introduction

1. Citation and commencement
2. Interpretation

PART 2

Categories of use

3. Definition of “using a hosepipe”
4. Watering a garden using a hosepipe
5. Cleaning a private motor-vehicle using a hosepipe
6. Watering plants on domestic or other non-commercial premises using a hosepipe
7. Cleaning a private leisure boat using a hosepipe
8. Filling or maintaining a domestic swimming or paddling pool
9. Drawing water, using a hosepipe, for domestic recreational use
10. Filling or maintaining a domestic pond using a hosepipe
11. Filling or maintaining an ornamental fountain
12. Cleaning walls, or windows, of domestic premises using a hosepipe
13. Cleaning paths or patios using a hosepipe
14. Cleaning other artificial outdoor surfaces using a hosepipe

This Order is made in exercise of the powers conferred on the Secretary of State and the Welsh Ministers by section 76A(2) of the Water Industry Act 1991(a).

(a) 1991 c. 56; section 76A was inserted by section 36 of the Flood and Water Management Act 2010 (c. 29). See section 76A(4) of the Water Industry Act 1991 for the definition of “the Minister”.

The Secretary of State, in relation to prohibitions which may be issued under section 76(1) of that Act^(a) by water undertakers whose areas are wholly or mainly in England, and the Welsh Ministers, in relation to prohibitions which may be issued under that section by water undertakers whose areas are wholly or mainly in Wales, make the following Order.

PART 1

Introduction

Citation and commencement

1. This Order may be cited as the Water Use (Temporary Bans) Order 2010 and comes into force on 1st October 2010.

Interpretation

2. In this Order—

“the Act” means the Water Industry Act 1991;

“grow” includes cultivate or propagate;

“health or safety reasons” includes—

(a) removing or minimising any risk to human or animal health or safety; and

(b) preventing or controlling the spread of causative agents of disease;

“National Plant Collection” means a plant collection which is part of the National Council for the Conservation of Plants and Gardens’ National Plant Collection scheme;

“outdoor pot” means a pot or other container that is outdoors or under cover;

“temporary garden or flower display” means a garden or flower display that is—

(a) at a show or exhibition; and

(b) on public display for a period not exceeding 7 days; and

“under cover” means in a greenhouse or outbuilding or under a permanent canopy.

PART 2

Categories of use

Definition of “using a hosepipe”

3.—(1) Using a hosepipe, in relation to a purpose in section 76(2) of the Act, includes the following—

(a) drawing relevant water through a hosepipe from a container and applying it for the purpose;

(b) filling or partly filling a container with relevant water by means of a hosepipe and applying it for the purpose.

(2) In paragraph (1), “relevant water” does not include water supplied by a water undertaker before the use of water to which the purpose relates was prohibited under section 76(1) of the Act.

(a) Section 76 was substituted by section 36 of the Flood and Water Management Act 2010.

Watering a garden using a hosepipe

4.—(1) Using a hosepipe to water a garden for health or safety reasons is not to be treated as falling within the category of use in section 76(2)(a) of the Act.

(2) In that section, “a garden” includes any of the following—

- (a) a park;
- (b) gardens open to the public;
- (c) a lawn;
- (d) a grass verge;
- (e) an area of grass used for sport or recreation;
- (f) an allotment garden, as defined in section 22(1) of the Allotments Act 1922(a);
- (g) any area of an allotment used for non-commercial purposes;
- (h) any other green space.

(3) But “a garden” does not include—

- (a) agricultural land, as defined in section 109(1) of the Agriculture Act 1947(b);
- (b) other land used in the course of a business for the purposes of growing, for sale or commercial use, any crops, fruit, vegetables or other plants;
- (c) land used for the purposes of a National Plant Collection;
- (d) a temporary garden or flower display; or
- (e) plants (including plant organs, seeds, crops and trees) which are in an outdoor pot or in the ground, under cover.

Cleaning a private motor-vehicle using a hosepipe

5. In section 76(2)(b) of the Act, “private motor-vehicle” means—

- (a) a mechanically propelled vehicle designed, constructed or adapted for use on roads, except—
 - (i) a public service vehicle, as defined in section 1 of the Public Passenger Vehicles Act 1981(c), and
 - (ii) a goods vehicle, as defined in section 192 of the Road Traffic Act 1988(d); or
- (b) a trailer designed, constructed or adapted for attachment to a vehicle falling within paragraph (a).

Watering plants on domestic or other non-commercial premises using a hosepipe

6.—(1) The category of use in section 76(2)(c) of the Act—

- (a) applies only to the watering of plants which are in an outdoor pot or in the ground, under cover; and
- (b) does not include watering plants—
 - (i) grown or kept for sale or commercial use, or
 - (ii) that are part of a National Plant Collection or temporary garden or flower display.

(2) In that section—

“domestic or other non-commercial premises” means—

(a) 1922 c. 51.

(b) 1947 c. 48.

(c) 1981 c. 14. Section 1 of the Public Passenger Vehicles Act 1981 was amended by section 139(3) of, and Schedule 8 to, the Transport Act 1985 (c. 67).

(d) 1988 c. 52.

- (a) any land, building or other structure used or enjoyed in connection with the use of any of the following which is used principally as a dwelling—
 - (i) a building or part of a building,
 - (ii) a caravan,
 - (iii) a boat; or
 - (b) any other land or premises which is not used principally for the purposes of a business; and
- “plants” includes plant organs, seeds, crops and trees.

Cleaning a private leisure boat using a hosepipe

7.—(1) The category of use in section 76(2)(d) of the Act does not include cleaning any area of a private leisure boat which, except for doors or windows, is enclosed by a roof and walls.

(2) Using a hosepipe to clean a private leisure boat for health or safety reasons is not to be treated as falling within the category of use in that section.

(3) In that section, “private leisure boat” means a vessel or other thing, other than a seaplane, which is designed, constructed or adapted to move through, in, on or over water and which is not—

- (a) used in the course of a business; or
- (b) made available or accessible to the public.

Filling or maintaining a domestic swimming or paddling pool

8.—(1) The following are not to be treated as falling within the category of use in section 76(2)(e) of the Act—

- (a) filling or maintaining a pool where necessary in the course of its construction;
- (b) filling or maintaining a pool using a hand-held container which is filled with water drawn directly from a tap;
- (c) filling or maintaining a pool that is designed, constructed or adapted for use in the course of a programme of medical treatment;
- (d) filling or maintaining a pool that is used for the purpose of decontaminating animals from infections or disease;
- (e) filling or maintaining a pool used in the course of a programme of veterinary treatment;
- (f) filling or maintaining a pool in which fish or other aquatic animals are being reared or kept in captivity.

(2) In that section, “domestic swimming or paddling pool” means a swimming or paddling pool, other than a pool that is being used for the purposes of a business, which is—

- (a) in a building, or part of a building, used principally as a dwelling; or
- (b) on any land or in any building that is used or enjoyed in connection with a building, or part of a building, mentioned in sub-paragraph (a).

Drawing water, using a hosepipe, for domestic recreational use

9.—(1) Drawing water, using a hosepipe, to operate water slides or other recreational equipment is to be treated as falling within the category of use in section 76(2)(f) of the Act.

(2) In that section, “domestic recreational use” means—

- (a) recreational use in connection with a domestic swimming or paddling pool within the meaning of section 76(2)(e) of the Act^(a); or
- (b) recreational use on land that is used or enjoyed in connection with a building, or part of a building, used principally as a dwelling, other than for the purposes of a business.

Filling or maintaining a domestic pond using a hosepipe

10.—(1) The category of use in section 76(2)(g) of the Act does not include filling or maintaining a domestic pond in which fish or other aquatic animals are being reared or kept in captivity.

- (2) In that section, “domestic pond” means a pond, including a swimming pond, on land that—
 - (a) is used or enjoyed in connection with a building, or part of a building, used principally as a dwelling; and
 - (b) is not being used for the purposes of a business.

Filling or maintaining an ornamental fountain

11.—(1) The category of use in section 76(2)(h) of the Act does not include filling or maintaining an ornamental fountain which is in or near a fish-pond and whose purpose is to supply sufficient oxygen to the water in the pond in order to keep the fish healthy.

(2) In that section, “ornamental fountain” includes a cascade or any other display of moving water.

Cleaning walls, or windows, of domestic premises using a hosepipe

12.—(1) The category of use in section 76(2)(i) of the Act applies only to the cleaning of the external walls or windows of domestic premises.

(2) Using a hosepipe to clean the walls or windows of domestic premises for health or safety reasons is not to be treated as falling within the category of use in that section.

- (3) In that section, “domestic premises” means—
 - (a) a building used principally as a dwelling or dwellings;
 - (b) a garage, shed, outbuilding or other building or structure used or enjoyed in connection with a building mentioned in sub-paragraph (a); or
 - (c) a wall or other means of enclosure within the curtilage of a building mentioned in sub-paragraph (a).

Cleaning paths or patios using a hosepipe

13. Using a hosepipe to clean paths or patios for health or safety reasons is not to be treated as falling within the category of use in section 76(2)(j) of the Act.

Cleaning other artificial outdoor surfaces using a hosepipe

14.—(1) Using a hosepipe to clean an artificial outdoor surface for health or safety reasons is not to be treated as falling within the category of use in section 76(2)(k) of the Act.

- (2) In that section, “artificial outdoor surface” means any of the following—
 - (a) any area outdoors which is paved or laid with hard or artificial material;
 - (b) timber decking;
 - (c) a quay;

(a) Article 8(2) defines “domestic swimming or paddling pool” for the purposes of section 76(2)(e) of the Water Industry Act 1991.

- (d) a trailer designed, constructed or adapted to launch boats or other vessels or craft into water, other than a private motor-vehicle within the meaning of section 76(2)(b) of the Act(a);
 - (e) the roof of any domestic premises within the meaning of section 76(2)(i) of the Act(b).
- (3) In paragraph (2), “quay” includes jetty, pontoon, wharf and slipway.

2nd September 2010

Richard Benyon
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

6th September 2010

Jane Davidson
Minister for Environment, Sustainability and Housing,
one of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Order)

Section 76 of the Water Industry Act 1991 (c. 56) (“the Act”), as substituted by section 36 of the Flood and Water Management Act 2010 (c. 29), allows a water undertaker to prohibit one or more specified uses of water supplied by it if it thinks that it is experiencing, or may experience, a shortage of water for distribution. The uses that may be prohibited are set out in section 76(2) of the Act.

This Order defines words and phrases used in section 76(2) of the Act, provides for certain exceptions to the categories of use in that section and provides that certain activities are to be or not to be treated as falling within the categories of use in that section.

A separate impact assessment has not been prepared in respect of this Order because the impact assessment which was prepared for the Flood and Water Management Act 2010 included assumptions which are reflected in this Order.

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(a) Article 5 defines “private motor-vehicle” for the purposes of section 76(2)(b) of the Water Industry Act 1991.
(b) Article 12(3) defines “domestic premises” for the purposes of section 76(2)(i) of the Water Industry Act 1991.

STATUTORY INSTRUMENTS

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